

INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
NONRULE POLICY DOCUMENT

Title: Excess Liability Trust Fund/Risk Integrated System of Closure
Identification Number: Waste - 0039 - NPD
Date Originally Adopted: February 10, 2000
Dates Revised: December 14, 2000
Other Policies Repealed or Amended: None
Brief Description of Subject Matter: This document will address whether the Excess Liability Trust Fund (ELF) will reimburse eligible parties for the costs incurred in implementing a corrective action plan using the Risk Integrated System of Closure (RISC).
Citations Affected: IC 13-23-8, IC 13-23-9, 328 IAC 1-3-5

This nonrule policy document is intended solely as guidance and does not have the effect of law or represent formal Indiana Department of Environmental Management (IDEM) decisions or final actions. This nonrule policy document shall be used in conjunction with applicable laws. It does not replace applicable laws, and if it conflicts with these laws, the laws shall control. revision to this nonrule policy document may be put into effect by IDEM thirty (30) days after the revised nonrule policy document is made available for public inspection and comment and is presented to the Financial Assurance Board. IDEM will submit revisions to the Indiana Register for publication.

The IDEM will be issuing a policy regarding the cleanup of sites using a risk based system [Risk Integrated System of Closure (RISC)]. This policy will replace the current policy for the remediation of leaking underground storage tanks, contained in the 1994 Underground Storage Tank Manual. Upon implementation of the RISC policy, there will be a transition period during which responsible parties will have to choose which policy they want to proceed under. This decision will be required on all sites undergoing corrective action. After the implementation of the RISC policy, responsible parties reporting releases must develop corrective action in accordance with the RISC policy.

There have been questions regarding whether the Excess Liability Trust Fund (ELTF) will reimburse responsible parties for corrective action costs under RISC and if so, under what conditions. IDEM does not intend to promulgate rules for this transition period because IDEM believes that the current rules are flexible enough to provide for reimbursement under RISC, as long as the responsible party has an approved Corrective Action Plan (CAP). Also, as the RISC policy is expected to be implemented in the second half of 2000, rules could not be promulgated quickly enough. Therefore, IDEM is issuing this nonrule policy document to explain how it intends to interpret the laws and rules concerning ELTF reimbursement.

IC 13-23-8-4(a)(5) requires that the responsible party have an approved CAP to be eligible for reimbursement from ELF. The CAP must be developed in accordance with the Underground Storage Tank Guidance Manual, *including the department's risk-based corrective action plan standards when the standards become effective*. Thus, IDEM has the authority to require and approve CAPs that are developed in accordance with IDEM's policies.

To ensure the solvency of the ELTF, IDEM will require owners/operators to submit cost comparison to show the cost benefit of changing a site currently undergoing remediation under the 1994 Underground Storage Tank Guidance to a RISC based clean-up approach. IDE will review the comparison and make a determination as to which method of remediation would be most cost effective.

Schedule for the ELTF reimbursement of LUST costs for sites during the transition to the RISC Policy.

Eligible Costs

<i>Costs incurred before the implementation and transition period of the RISC policy, including:</i>
--

- | |
|---|
| <input type="checkbox"/> Costs incurred in the implementation of an approved CAP that is consistent with the 1994 Underground Storage Tank Manual.
<input type="checkbox"/> Costs associated with the collection of data that will be used in a decision as to which policy the responsible party wishes to use. |
|---|

☐

<i>Costs incurred throughout the transition period for the RISC policy, including:</i>
--

- | |
|---|
| <input type="checkbox"/> If the responsible party has an approved Corrective Action Plan (CAP), costs incurred for corrective action, regardless of whether the CAP is developed under the current guidance or under the RISC Guidance would be eligible.
<input type="checkbox"/> Costs associated with transitioning a site from the 1994 policy to the RISC policy.
<input type="checkbox"/> Costs associated with the collection of data necessary to make an informed decision as to which policy to proceed under.
<input type="checkbox"/> Costs incurred in acquiring environmental notices (these costs will be considered third party claims and will be processed in accordance with IC 13-23-9-3). |
|---|

☐

<i>Costs incurred once the RISC policy transition period has ended, including:</i>
--

- | |
|---|
| <input type="checkbox"/> Costs incurred for corrective action at leaking underground sites which have approved CAPs.
<input type="checkbox"/> Costs incurred in acquiring environmental notices (these costs will be considered third party claims and will be processed in accordance with IC 13-23-9-3). |
|---|

☐

Ineligible Costs

Costs not reimbursable under any circumstance:

- ☐ Costs that are not eligible under 328 IAC 1-3-5.
- ☐ Costs that do not fall within the reasonable cost range established under 328 IAC1-3-5.
- ☐ Costs associated with the development of a CAP under the RISC policy before the policy has been implemented, other than those costs associated with the collection of data which will be used in a decision as to which policy the responsible party wishes to use.
- ☐ Costs associated with transitioning a site from RISC will not be paid for by the ELTF if these costs would be greater than the costs to complete the remediation under the 1994 Underground Storage Tank Manual.



FACT SHEET

EXCESS LIABILITY TRUST FUND (ELTF) AND RISK-INTEGRATED SYSTEM OF CLOSURE (RISC)

OFFICE OF ENVIRONMENTAL RESPONSE

JUNE 2000

Are RISC characterization activities and costs associated with RISC guidance cover under ELTF?

One of the eligibility criteria for ELTF reimbursement is an approved corrective action plan (CAP). The CAP details remedial action and goals to obtain closure. Therefore, whatever is in the IDEM-approved CAP is reimbursable. Funds for release characterization are also eligible for reimbursement. This can include costs associated with characterization using RISC guidance prior to CAP implementation.

What is IDEM's position on ELTF reimbursement for cleanups completed to less than risk-based levels? Some property owners may want to conduct cleanup to nondetect levels.

As stated above, costs associated with activities approved in the CAP are reimbursable. Costs incurred for activities conducted beyond what is in the CAP are **not** eligible for reimbursement. Generally, only land-use based default levels are acceptable remedial goals in approved CAPs. However, in certain situations, residential levels can be approved. For example, residential levels are acceptable if the property is leased and property control cannot be obtained for the site. Another example is a site that results in ecological impacts or that has a direct path to an ecological area, which may necessitate a lower cleanup level.

Who is responsible for reimbursement criteria?

The responsibility for CAP approval rests with IDEM. The responsibility for reimbursement criteria rests with the Financial Assurance Board (FAB). Through rulemaking, the FAB has established reasonable costs for most activities associated with corrective action.

What impact will RISC have on reimbursable costs under the Excess Liability Fund (ELF) Program?

The FAB has adopted a nonrule policy document (see [Appendix 5-2](#) of the User's Guide) that deals with ELTF's interaction with RISC. The FAB will also be promulgating rules which, in part, will implement RISC as part of ELTF.

What is the current mechanism for CAP approval?

There is a new mechanism for reviewing CAPs within the ELF Program. A private contractor has been awarded a contract to review both ELTF claims and CAPs. The contractor will perform a technical review of the CAP and forward this review to IDEM. IDEM will then approve or deny the CAP based on the technical information provided by the contractor.

How will RISC affect the contents of CAPs?

For permanent closure, the CAP will still detail remedial actions and goals. IDEM will review and approve CAPs as before. The main change is that if remedial goals are greater than residential standards, environmental notices will need to be in place prior to CAP approval. This requirement also applies to closure with institutional controls because closure with institutional controls depends on preventing exposure to contamination at concentrations that exceed human health-based levels. Therefore, the environmental notice is the key component of exposure prevention in the RISC guidance.

If environmental notices are not in place prior to CAP submittal, it will be difficult to determine whether closure with institutional controls can be utilized. For example, if closure with institutional controls is desired for a site with off-site ground water contamination and IDEM approves the CAP before off-site notice is obtained but no agreement can be reached regarding the environmental notice, the point of compliance (POC) could move from off site to the site property boundary. In this case, remedial action is required to bring the plume back to where property control ends. Now a CAP addendum must be submitted to IDEM to propose remedial action to bring the POC into compliance.

At this time, it is anticipated that CAP submittal and approval can be completed prior to the completion of 2 years of plume stability monitoring. If a CAP is submitted that proposes a closure with institutional controls for ground water **and** property control is documented, the CA can be reviewed and approved based on the information supplied. If the CAP is approved but the plume later fails the stability test, either a remedial plan can be prepared and implemented or plume stability can be modeled as a nondefault option.

Will the ELF Program reimburse costs associated with obtaining environmental notices for property not owned by the ELTF participant?

Costs associated with environmental notices can be included in third-party claims, which [IC 13-23-9](#) states that IDEM will reimburse. However, the Attorney General's office will review all third-party claims to determine whether they are reasonable. In other words, if an ELTF participant pays an amount that exceeds what the Attorney General considers to be reasonable, the participant will not be reimbursed for the full amount of the claim. The Attorney General's office may request additional documentation, such as appraisals or affidavits, to support a determination that the costs are reasonable.